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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,976	04/02/2007	Flemming Kjaergaard Christensen	PATRADE	7548
7590 James C. Wray 1493 Chain Bridge Road Suite 300 McLean, VA 22101			EXAMINER MI, QIUWEN	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 11/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,976

Applicant(s)

CHRISTENSEN, FLEMMING
KJAERGAARD

Examiner

QIUWEN MI

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/9/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-11 are pending.

Applicant's election with traverse of Group I, claims 1-8, and 11, and species topical lotion in the reply filed on 9/4/2008 is acknowledged. The traversal is on the ground(s) that claim 9 is a claim for a process specially adapted for the manufacture of the product of independent claim 1. This is not found persuasive because as indicated in the last Office Action, the inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: As Koch et al (DE 10315025 A1) teach the combination of an oil containing omega3 fatty acids (thus an extract of a deep sea fish) and a plant extract containing polyphenols useful e.g. for treating or preventing inflammatory, immunological and metabolic disorders. Koch et al further teach that the oil contains alpha-linoleic acid, especially fish oil etc; and the plant extract contains at least 15 wt.% polyphenols, especially a rooibos (see Abstract), therefore, there is no special technical feature in the application. Accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1., and therefore lack of unity of invention exists.

The requirement is still deemed proper and is therefore made FINAL.

Claims 6, and 8-10 are withdrawn from further consideration as being drawn to nonelected inventions and species.

Claims 1-5, 7, and 11 are examined on the merits.

Claim Objections

Claims 1-5, 7, and 11 are objected to because of the following informalities: Claims 1 and 3 recite “rooibos (*aspalathus linearis*)...bearberry (*arctostaphylos uva-ursi*)”; claim 4 recites “horsetail (*equisetum arvense*)”; which are inappropriate. Please make sure to write the Latin name in the proper format, wherein the first word is capitalized, the second word is lowercase and the entire name is italicized

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites improper Markush groups, “...further comprising one or two components selected from the group comprising a horsetail extract (*equisetum arvense* L.) and a shellfish extract”.

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Regarding claim 7, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita (JP 06128121 A), in view of Aizawa et al (JP 58079912 A) and Tomono et al (JP 11279069 A), and further in view of Hasegawa et al (JP 2001302525 A), and Larsen et al (US 2005/0113293).

Yamashita teaches a cosmetic containing, as the active component, an extract of *Aspalathus linearis* excellent in removal of active oxygen and moisture retention and exhibiting a

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high safety to the skin (see Abstract, the rejection is based on the Abstract, full translation of the document has been ordered).

Yamashita does not teach the incorporation of the extract of deep-sea fish, extract of *Arctostaphylos uva-ursi*, or diacetyl boldine into the composition.

Aizawa et al teach a cosmetic having high safety, excellent feeling and physical properties and low oiliness, and giving refreshing, moist and smooth feeling to the skin, by compounding an oil derived from a deep-sea fish (see Abstract, the rejection is based on the Abstract, full translation of the document has been ordered).

Tomono et al teach active oxygen eliminating agent or skin beautifying cosmetic composition comprises one or more kinds of plant extracts selected from among extracts of plant parts of *Arctostaphylos uva-ursi* (L). Spreng., etc. The agent has excellent active oxygen eliminating action and further can improve a roughened skin and impart gloss and tenseness to the skin (see Abstract, the rejection is based on the Abstract, full translation of the document has been ordered).

Hasegawa et al teach skin external preparation for use in cosmetics and pharmaceuticals, and for whitening of skin, comprises extract of specified plants e.g. *Equisetum arvense* (see Title). The skin external preparation has improved skin whitening effect, and is excellent in stability and safety. The skin external preparation efficiently prevents dark complexion, stain and freckle (see Abstract, the rejection is based on the Abstract, full translation of the document has been ordered).

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Larsen et al teach the use of a lipid extract of *Skeletonema costatum* which contains the alkaloid boldine in a cosmetic composition for the amelioration of the signs of skin ageing. Said lipid extract and the compound boldine improves the gap junctional intercellular communication in keratinocytes, fibroblasts and pre-adipocytes. The inventors show that treatment with boldine increases the content of connexin 43 in keratinocytes of middle aged and elderly people to the content found in keratinocytes of young people in a dose dependent manner with a boldine concentration of 50 nM being optimal. Since an increase of the cellular content of connexin 43 must contribute to a facilitation of gap junctional intercellular communication the compound boldine can be useful in the present invention [0743].

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the deep sea fish oil (thus an extract) from Aizawa et al since Aizawa et al teach it is having high safety, excellent feeling and physical properties and low oiliness, and giving refreshing, moist and smooth feeling to the skin.

It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use extracts of plant parts of *Arctostaphylos uva-ursi* from Tomono et al since Tomono et al teach it has excellent active oxygen eliminating action and further can improve a roughened skin and impart gloss and tenseness to the skin.

It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use extracts of *Equisetum arvense* from Hasegawa et al since Hasegawa et al teach it has improved skin whitening effect, and is excellent in stability and safety, prevents dark complexion, stain and freckle.

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It would also have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use boldine from Larsen et al since Larsen et al teach it ameliorates the signs of skin ageing.

Since all the compositions yielded beneficial results in cosmetic industry, one of ordinary skill in the art would have been motivated to make the modifications and combine the inventions together. Regarding the limitation to the use of boldine derivative, diacetyl boldine, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Michele Flood/
Primary Examiner, Art Unit 1655